DRAFT RESOLUTION

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

REDACTED

Item 38 ID#4771

ENERGY DIVISION **RESOLUTION E-3946**
July 21, 2005

R E S O L U T I O N

Resolution E-3946. Pacific Gas & Electric (PG&E) Company requests approval of three new renewable resource procurement contracts: FPL Montezuma, Buena Vista, and Pacific Renewable. These contracts are approved without modifications.

By Advice Letter 2655-E. Filed on April 26, 2005.

SUMMARY

PG&E's three renewable contracts comply with the Renewable Portfolio Standard (RPS) procurement guidelines and are approved

PG&E's request for approval of three renewable resource procurement contracts is granted pursuant to D.04-06-014 and subsequent letter by the CPUC's Executive Director on June 30, 2004. The energy acquired from these contracts will count towards PG&E's Renewable Portfolio Standard (RPS) requirements.

Generating facility	Type	Term Years	MW Capacity	Location
FPL Montezuma	Wind	20	32.4	Solano, CA
Buena Vista	Wind	15	28 – 43	Altamont Pass, CA
Pacific Renewable	Wind	20	82.5	Lompac, CA

Deliveries from the power purchase agreements (PPAs) are priced below the 2004 market price referent (MPR) and thus do not require supplemental energy payments (SEPs) from the California Energy Commission (CEC).

Confidential information about the contracts should remain confidential

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

BACKGROUND

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio

The California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078, effective January 1, 2003. It requires that a retail seller of electricity such as PG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). The RPS program is set out at Public Utilities Code Section 399.11, et seq. Each utility is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010. This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004[1], which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets (APTs) for 2004, in order to make progress towards the goal expressed in the EAP.

For 2004 the Commission established an APT for each utility, which consists of two separate components: the baseline, representing the amount of renewable generation a utility must retain in its portfolio to continue to satisfy its obligations under the RPS targets of previous years; and the incremental procurement target (IPT), defined as at least one percent of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts. D.04-06-014 established a 2004 APT for PG&E of 711 GWh[2].

R.04-04-026 established procurement guidelines for the RPS Program

---

[1] http://www.cpuc.ca.gov/Published/Final_decision/36206.htm
[2] D.04-06-014, Appendix B (p. 3)

The Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071. On June 9, 2004, the Commission adopted its Market Price Referent methodology[3] for determining the Utility's share of the RPS seller's bid price, as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day the Commission adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014 as required by Public Utilities Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell products requested in a RPS solicitation were provided in D.04-07-026.

PG&E requests approval of three new renewable energy contracts.

On April 26, 2005 PG&E filed AL 2655-E requesting Commission approval of three wind contracts: FPL Montezuma, Buena Vista, and Pacific Renewables. These PPAs result from PG&E's July 15, 2004 solicitation for renewable bids, which was authorized by D.04-06-014 and subsequent letter by the Executive Director on June 30, 2004.

The Commission's approval of all 3 PPAs will contribute significantly towards PG&E's renewable procurement goals. In 2004, the year of this RPS solicitation, PG&E's incremental procurement target (IPT) was 711 GWh. The PPAs will contribute an aggregate 490 GWH per year, of which 472 GWH would be incremental.

PG&E requests final "CPUC Approval" of PPAs

PG&E requests the Commission to issue a resolution containing the findings required by the definition of "CPUC Approval" in Appendix A of D.04-06-014 and incorporated in each PPA so that each of PG&E's contracts for these renewable resources can remain in effect.[4]

---

[3] D.04-07-029

[4] As provided by D.04-06-014, the Commission must approve the Agreements and payments to be made thereunder, and find that the procurement will count toward PG&E's RPS procurement obligations, as either incremental procurement or procurement for baseline replenishment in order for an executed RPS PPA to be binding on the parties.

Specifically, PG&E requests that the Commission issue a resolution that:

1. Approves the PPAs in their entirety, including payments to be made by PG&E, subject to CPUC review of PG&E's administration of Agreements;
2. Finds that any procurement pursuant to these Agreements is procurement from an eligible renewable energy resource for purposes of determining PG&E compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law;
3. Finds that any procurement pursuant to these Agreements constitutes incremental procurement or procurement for baseline replenishment by PG&E from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law;
4. Finds that any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.

PG&E's Procurement Review Group participated in review of the contracts

In D. 02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

The PRG for PG&E consists of: California Department of Water Resources (DWR), California Energy Commission (CEC), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN).

PG&E provided its PRG with reports on the progress of its 2004 RPS solicitation on several occasions.[5] The first briefing occurred on September 29, 2004, and focused on the results of PG&E's July 15, 2004 solicitation. At that briefing, PG&E described the process by which it evaluated the Offers and provided its preliminary Shortlist. At the second PRG briefing on December 14, 2004, PG&E provided a status report on the 2004 solicitation. At the March 4, 2005 meeting, PG&E provided the PRG with an overview of the projects it considered most likely to proceed to final agreement. This presentation included the negotiated terms and conditions of the PPAs.

The PRG members expressed general satisfaction with the manner in which PG&E arrived at its 2004 RPS shortlist and the resulting PPAs. Specifically, the PRG either supported or did not oppose the approval of the 3 wind contracts that PG&E is asking for Commission approval via AL 2655-E.

Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the contracts to the resolution process. Energy Division had to review the modifications independently, and allow for a full protest period before concluding its analysis.

NOTICE

Notice of AL 2655-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter AL 2655-E was not protested.

[5] While the Energy Division is a member of the PRG, its representatives did not attend any of the briefings before it had issued the draft 2004 MPR for public comment, which occurred on February 4, 2005.

DISCUSSION

Description of the projects

The following table summarizes the substantive features of the PPAs:

Generating Facility	Type	Term Years	Price	MW Capacity	Location
FPL Montezuma	Wind	20	See confidential Appendix-A	32.4	Solano, CA
Buena Vista	Wind	15		28 – 43	Altamont Pass, CA
Pacific Renewable	Wind	20		82.5	Lompac, CA

PPAs are consistent with PG&E's CPUC adopted 2004 RPS Plan

California's RPS statute (SB 1078) requires the Commission to review the results of a renewable energy resource solicitation submitted for approval by a utility. The Commission will then accept or reject proposed PPAs based on their consistency with the utility's approved renewable procurement plan (Plan).[6] PG&E's 2004 RPS plan was approved on June 30, 2004. As determined by statute, it includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of compliance flexibility mechanisms established by the Commission, and a bid solicitation setting forth the need for renewable generation of various operational characteristics.[7]

The proposed PPAs are consistent with PG&E's approved 2004 RPS plan because (1) the PPAs fit with identified renewable resource needs and (2) they were achieved through PG&E's adherence to its Solicitation Protocol, which is the primary component of the 2004 RPS plan.

PPAs fit with identified renewable resource needs

In its approved 2004 RPS plan, PG&E's portfolio assessment showed a "medium" need for as-available and baseload resources beginning in 2007. The need for baseload resources was high in 2008. In order to meet the 20% renewable target by 2010, PG&E would require incremental energy deliveries

[6] Pub. Util. Code Section 399.14(c)
[7] Pub. Util. Code Section 399.14(a)(3)

from newly contracted resources at an average rate of approximately 700 to 800 GWh per year. The PPAs under consideration propose to deliver about 490 GWh of as-available renewable generation per year starting in this timeframe.

PPA selection consistent with RPS Solicitation Protocol

The proposed PPAs are consistent with the RPS plan because they were achieved through PG&E's adherence to its Solicitation Protocol.

1. PG&E generally followed the RPS Solicitation schedule set forth in its Solicitation Protocol, but ultimately, the schedule for concluding negotiations was necessarily extended.
2. These bids were evaluated and scored in the manner prescribed in the Solicitation Protocol. In particular, evaluation of the offer price took into account PG&E's published Time of Delivery factors, the potential cost of transmission adders was imputed to the offer, and offers were scored pursuant to a methodology that attributed the proper weight to market valuation, portfolio fit, credit and other non-price factors of the Solicitation protocol.

A number of the highest-ranked bids, sufficient in number to facilitate the achievement of the 1% APT, were placed on PG&E's short list on September 29, 2004 and were presented to PG&E's PRG. On October 22, PG&E notified the Commission's Executive Director that it had finalized its shortlist.

Bid evaluation process consistent with Least-Cost Best Fit (LCBF) decision

The LCBF decision[8] directs the utilities to use certain criteria in their bid ranking. It offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence serious negotiations. Much of the bid ranking criteria described in the LCBF decision is incorporated in PG&E's Solicitation Protocol and is discussed above.

Market Valuation

In its "mark-to-market" analysis, PG&E takes the present value of the bidder's payment stream and compares it with the present value of the product's market value to determine the benefit (positive or negative) from the procurement of the

[8] D.04-07-029

resource, irrespective of PG&E's portfolio. PG&E evaluates the bid price and indirect costs, such as the costs to the utility transmission system caused by interconnection of the resource to the grid or integration of the generation into the system-wide electrical system.

Portfolio Fit

Portfolio fit considers how well an offer variation's features match PG&E's portfolio needs. This analysis includes the anticipated transaction costs involved in any energy remarketing (i.e., the bid-ask spread) if the contract adds to PG&E's net long position. The underlying projects are expected to commence deliveries between 2006 and 2008. PG&E's RPS plan shows that at that time, there is at least moderate need for generation during all periods of the day. Because these deliveries are anticipated to occur at a time when PG&E is experiencing moderate need, the acceptance of these intermittent deliveries should not result in significant remarketing costs.

Consideration of Repowered Projects

The Commission has encouraged the repowering of the existing wind facilities by stating that, "the repowering of existing wind facilities in prime locations is a common-sense approach to increasing procurement of renewable energy, with costs that should be lower than for Greenfield projects."[9] Subsequently in its decision resolving issues related to the rank ordering and selection of least-cost, best-fit renewable generation resources, the Commission favored utility evaluation methodologies that would recognize the benefits provided as a result of contract restructuring.[10]

PG&E's 2004 RPS solicitation has resulted in one wind repowering project, represented by the Buena Vista PPA. As part of the PPA, the parties have agreed to terminate the current Standard Offer 4 contract between PG&E and the developer. In its place, the current production plus incremental generation will supply additional deliveries of renewable power priced below the MPR.

Consistency with Adopted Standard Terms and Conditions

[9] D.03-06-071
[10] D.04-07-029

The Commission set forth standard terms and conditions to be incorporated into RPS agreements in D.04-06-014. Standard Terms and Conditions identified in Appendix A of that decision as "may not be modified" have not been modified.

During the course of negotiations, the parties identified a need to modify some of the standard terms in order to reach agreement. These terms had all been designated as subject to modification upon request of the bidder in Appendix A of D.04-06-014.

Consistency with the Transmission Ranking Cost decision

The RPS statute requires the "least-cost, best-fit" eligible renewable resources to be procured. Under the RPS program, the potential customer cost to accept energy deliveries from a particular project must be considered when determining a project's value for bid ranking purposes. PG&E's 2004 transmission capacity and upgrade costs for PG&E substations at which renewable resources are expected to interconnect.

PG&E determined the TRC cluster at which each short listed project would interconnect to the transmission grid. With the exception of Pacific Renewables, no significant transmission upgrades were needed for the short-listed bids, no additional cost to the consumer was added to the project bid price prior to bid evaluation. For Pacific Renewables, its interconnection costs, as identified through a prior System Impact Study and Facility Study, were imputed to its bid price for purposes of bid evaluation.

Contract prices are below the 2004 MPR

The levelized contract price for each PPA does not exceed the 2004 MPR.[11] Furthermore, the contract price payments are below the MPR and *per se* reasonable as measured according to the net present value calculations explained in D.04-06-015 and D.04-07-029. The net present value of the sum of payments to be made under each of the PPAs is less than the net present value of payments that would be made at the market price referent for the anticipated delivery. Confidential Appendix B demonstrates that the levelized contract payments are

[11] 2004 MPR **DRAFT** Resolution E-3942, which will be on the July 21, 2005 Commission Meeting Agenda. Note – PG&E's original AL filing used 2004 MPRs from the Revised 2004 MPR ACR, issued on February 11, 2005. Draft Resolution E-3942 revises the 2004 MPRs released on February 11, 2005.

below the 2004 MPR, which has been adjusted for the appropriate project on-line date.

Qualitative factors were considered during bid evaluation

PG&E considered qualitative factors as required by D.04-07-029[12]. While it was possible to include a diverse mix of renewable technologies in the short list, eventually certain technologies were found to confer significantly greater customer benefits. None of the bids asserted that the proposed projects would contribute to local reliability. Only one asserted that it had a plan to provide environmental stewardship. That particular project was short listed.

PPAs are viable projects

PG&E believes that the projects selected are viable because:

Financeability of resource

PG&E believes that the projects selected have a reasonable likelihood of being financed and completed as required by the PPAs and will be available to deliver energy by the guaranteed commercial operation date.

Production tax Credit

The existing federal production tax credit, as provided in Section 45 of the Internal Revenue Code of 1986, as amended, would substantially benefit both the buyer and the seller under the PPAs.

Sponsor's creditworthiness and experience

Each bidder was required to provide credit-related information as part of its bid. PG&E has reviewed this information and is satisfied that each of the parties to the PPAs possesses the necessary credit and experience to perform as required by the party's PPA.

Confidential information about the contracts should remain confidential

Certain contract details were filed by PG&E under confidential seal. Energy Division recommends that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and

[12] D.04-07-029

considered for possible disclosure, should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

COMMENTS

"Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding."

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 31l(g)(1) to **16 days**. Accordingly, this matter was placed on the Commission's agenda **10 days** prior to the Commission meeting scheduled for July 21, 2005. By stipulation of all parties, comments shall be filed no later than **10 days** following the mailing of this draft resolution.

FINDINGS

1. PG&E filed Advice Letter 2655-E on April 26, 2004, requesting Commission review and approval of three new renewable energy contracts: FPL Montezuma (wind), Buena Vista (wind), and Pacific Renewables (wind).
2. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP) called for acceleration of this goal to reach 20 percent by 2010.
3. Wind energy facilities are RPS-eligible renewable energy resources.
4. D.04-06-014 established a 2004 APT for PG&E of 711 GWh[13].
5. D.04-06-014 also directed the utilities to issue renewable RFOs, consistent with their renewable procurement plans, between June 30, 2004 and July 15, 2004.
6. PG&E issued its RFO on July 15, 2004.

[13] D.04-06-014, Appendix B (p. 3)

7. D.04-06-014 set forth standard terms and conditions to be incorporated into RPS PPAs.
8. Levelized contract prices below the MPR are considered *per se* reasonable as measured according to the net present value calculations explained in D.04-06-015 and D.04-07-029.
9. D.04-07-029 adopted least-cost, best-fit criteria which the utilities must use in their selection process after the RFO has been closed.
10. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
11. PG&E briefed its PRG regarding these contracts on September 29, 2004, December 14, 2004, and on March 4, 2005. The members of PG&E's PRG either supported or did not oppose the approval of this contract.
12. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "**[REDACTED]**" in the redacted copy, should not be made public upon Commission approval of this resolution.
13. The proposed contract prices are below the 2004 MPRs released in Resolution E-3942.
14. The Commission has reviewed the three proposed contracts and finds them to be consistent with PG&E's approved 2004 renewable procurement plan.
15. Procurement pursuant to the PPAs is procurement from an eligible renewable energy resource for purposes of determining PG&E compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
16. Procurement pursuant to the PPAs constitutes incremental procurement or procurement for baseline replenishment by PG&E from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation to increase its totals procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

17. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
18. AL 2655-E should be approved without modifications.

<u>THEREFORE IT IS ORDERED THAT:</u>

1. Advice Letter AL 2655-E is approved without modifications

2. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 21, 2005; the following Commissioners voting favorably thereon:

____

STEVE LARSON
Executive Director

Appendix A

Contract Prices

REDACTED TABLE

Appendix B

2004 MPR Benchmarking

REDACTED TABLE